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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ARCADIO DELACRUZ,

Defendant and Appellant.

F057095

(Super. Ct. No. 08CM1505A)

**OPINION**

APPEAL from a judgment of the Superior Court of Kings County. James LaPorte, Judge.

Deborah Prucha, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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Pursuant to a plea agreement, defendant Arcadio DeLaCruz pled no contest to assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd.

(a)(1));<sup>1</sup> in return, the sentence enhancement allegations were dismissed, including the allegation the crime was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)). Prior to entry of the plea, the trial court advised defendant the court would determine at sentencing whether defendant should be required to register as a gang offender under section 186.30, and defendant indicated he understood the court's advisement. Defendant also stipulated that the preliminary hearing provided a factual basis for the plea. At sentencing, the court imposed a four-year prison term and required defendant to register as a gang offender. Defendant raised no objection to the court's sentencing decision. On appeal, defendant's sole contention is that the gang registration requirement must be vacated because there was insufficient evidence to support a finding that his offense was gang related. We affirm.

### **DISCUSSION**<sup>2</sup>

Assuming without deciding defendant has not waived the issue by failing to object in the trial court, we reject defendant's contention that the gang registration requirement must be vacated because we find substantial evidence supports the trial court's implicit finding that the assault committed by defendant was gang related.

“When an appellant asserts there is insufficient evidence to support the judgment, our review is circumscribed. [Citation.] We review the whole record most favorably to the judgment to determine whether there is substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could have

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<sup>1</sup> Further references are to the Penal Code unless otherwise specified.

<sup>2</sup> We omit a recitation of the facts as unnecessary to resolution of the issue defendant raises on appeal. As discussed below, defendant's evidentiary challenge centers on the “primary activities” element of the statutory definition of a criminal street gang. (§ 186.22, subd. (f).) We conclude, however, that this element was sufficiently established by the stipulation, entered by defendant at the preliminary hearing, that his gang was a criminal street gang within the meaning of section 186.22.

made the requisite finding under the governing standard of proof.” (*In re Jorge G.* (2004) 117 Cal.App.4th 931, 941-942 (*Jorge G.*.)

Gang registration under section 186.30, is mandatory for “[a]ny crime that the court finds is gang related at the time of sentencing or disposition.” (§ 186.30, subd. (b)(3).) The term “gang related” includes, but is not limited to, “all crimes committed for the benefit of, at the direction of, or in association with a criminal street gang.” (*Jorge G.*, *supra*, 117 Cal.App.4th at p. 941.) The fact that a crime qualifies as “gang related” must be proved by a preponderance of the evidence. (*Id.* at p. 944.) A defendant’s prior offenses and past gang activities or personal affiliations are relevant to determining whether the current offense is “gang related.” (*People v. Martinez* (2004) 116 Cal.App.4th 753, 762.) However, the record must also include some evidence that the current offense is “gang related.” (*Ibid.*)

“A crime is gang related if it is related to a criminal street gang as defined in section 186.22, subdivisions (e) and (f). The elements of this definition require: (1) an ongoing organization or group, (2) of three or more persons, (3) having as one of its primary activities the commission of the crimes enumerated in section 186.22, subdivision (e)(1)-(25), (4) having a common name or symbol, and (5) whose members individually or collectively have engaged in a pattern of criminal gang activity. This pattern of gang activity must consist of: (a) two or more of the offenses enumerated in section 186.22, subdivision (e)(1)-(25), provided that at least one offense occurred after the effective date of the statute; (b) the last offense occurred within three years of the one before it; and (c) the offenses were committed on separate occasions or by two or more persons.” (*Jorge G.*, *supra*, 117 Cal.App.4th at p. 944.)

During the preliminary hearing, the prosecution presented evidence that defendant’s crime, which arose out of an altercation between two groups at a Denny’s restaurant, was gang related. Defendant does not challenge the sufficiency of this evidence to show that he was a member of the Bulldogs gang or that he assaulted the

victim for the benefit of his gang. Rather, he contends the evidence was insufficient to show the Bulldogs gang met the statutory definition of a criminal street gang because there was no evidence that the commission of offenses enumerated in section 186.22, subdivision (e), was a primary activity of the Bulldogs gang.

Defendant's contention is without merit because, during the preliminary hearing, he entered a stipulation that the Bulldogs gang was a criminal street gang *as defined under section 186.22*, which necessarily covered the primary activities element of the definition.<sup>3</sup> The stipulation made it unnecessary for the prosecution to present evidence of the primary activities of defendant's gang. (See *People v. Bonin* (1989) 47 Cal.3d 808, 848-849 [where offer to stipulate to certain facts is made, facts covered by the proposed stipulation are removed from dispute; testimony elicited to prove such facts is irrelevant and inadmissible].) Defendant has provided no direct support for his suggestion that the trial court could not properly rely on the stipulation in determining whether his crime was gang related for purposes of imposing the gang registration requirement. Besides the stipulation, defendant does not challenge any of the other gang evidence presented at the preliminary hearing or the trial court's reliance thereon in imposing the gang registration requirement.

Based on the foregoing, we conclude there was sufficient evidence to establish defendant's offense of assault by means of force likely to produce great bodily injury was gang related. As a result, we conclude the trial court was justified in requiring defendant to register as a gang offender pursuant to section 186.30.

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<sup>3</sup> In the prosecutor's words, the parties stipulated that the "Bulldogs are a criminal street gang as defined under Penal Code Section 186.2[2], that they have a pattern of criminal activity as defined by that statute. And also there's a stipulation that Nortenos likewise fit that criteria."

**DISPOSITION**

The judgment is affirmed.

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HILL, J.

WE CONCUR:

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WISEMAN, Acting P.J.

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POOCHIGIAN, J.